One may fairly argue that the inducement held out might very well have led the woman to lie, in order to obtain the charm or talisman. She might think it of great value to her, even though she was innocent. But granting the court's position, that the favor promised was one that would induce none but a guilty person to confess, have we here the true test of admissibility? Are confessions obtained by promises of favor to be excluded for the sole reason that they lack credibility? There are numerous *dicta* to that effect. So Keating, J., in *Reg.* v. *Reason*, 12 Cox, 228; Littledale, J., in *Rex* v. *Court*, 7 C. & P. 486; and Coleridge J., in *Rex* v. *Thomas*, 7 C. & P. 345. But in none of these cases, or others hitherto decided, has it been necessary to go so far as to hold that the sole ground of exclusion. May it not be that the true ground is an aversion on the part of English-speaking peoples to the use in criminal cases of evidence obtained by such questionable means? May it not be from a spirit of fair play to the defendant? That would seem to be the reason why confessions obtained by threats are excluded. At all events, such a feeling has always had great influence on the minds of English and American judges. Whether it is wise to be so careful of the prisoner is another and larger question. Protests against such an excessive solicitude are not wanting to-day, and among them one may, perhaps, count this North Carolina case.

ADMISSION TO THE NEW YORK BAR. — In the latest rules of the New York Court of Appeals in relation to the admission of attorneys and counsellors-at-law, an important relaxation is noticeable in the rather draconic severity on this subject that has characterized that State. In the past, one year's study in a local office has been an indispensable and rather appalling requisite; but, according to the rules promulgated on October 22, that is now done away with, and different qualifications substituted in its stead. To entitle an applicant to an examination, he must now have studied law for three years, "except that if the applicant is a graduate of any college or university, his period of study may be two years instead of three." This requirement may be fulfilled "by serving a regular clerkship in the office of a practising attorney of the Supreme Court in this State after the age of eighteen years; *or* after such age, by attending an incorporated law school, etc., etc.; *or* by pursuing such course of study, in part by attendance at such law school, and in part by serving such clerkship." If the applicant be a graduate of a college or university, he must, however, have pursued the prescribed course of study *after* his graduation.

The effect of this change on our Law School will, undoubtedly, be a beneficial one. Men who have not been graduated from college can now prepare for New York Bar examinations, as quickly here as anywhere, while, since the two years' study required from college graduates must be *after* graduation, Harvard seniors will find a leave of absence from the college and three years' study here, their very best method of preparation. To all college graduates, also, now that the shadow of the local office rule has been removed, the Harvard Law School can offer as great facilities for expeditious preparation as any law school in the land.

CHANDELOR *v.* LOPUS. The case of *Chandelor* v. *Lopus*, a famous landmark of the law of deceit and implied warranty, is reported as of Trinity

Term, 1 James I., in Cro. Jac. 4 and in 2 Rolle Rep. 5. In Dyer, 75*a* (Treby's note), there is a report of an action between the same parties, stated to be of Trinity, 3 James I., which Vaillant, Dyer's editor, has with mistaken zeal assumed to be the same case. But in a MSS. volume of reports, 1–10 James I., in the Harvard Law School Library, Professor J. H. Beale has found a full report of this second case, which shows that after the failure, reported Cro. Jac. 4 and 2 Rolle, 5, Lopus tried again in 3 James I., with a new and stronger declaration. The following extracts are substantially the whole of this second case. The reader may be referred to Mr. R. C. MacMurtrie's article upon the case in 1 HARVARD LAW REVIEW, 191, "*Chandelor* v. *Lopus*," and to Professor Emlin McClain's article upon the history of "Implied Warranties in Sales," in 7 HARVARD LAW REVIEW, 212. It will be noticed that a difficulty about the case which Professor McClain speaks of is entirely resolved by the fact of the existence of two cases.

"Lopus brought an action on the case against Chandlor, and declared that the defendant . . . was possessed of a stone which he asserted and declared to the plaintiff to be a good and perfect stone called a Bezers Stone, . . . but, the said defendant, knowing that the stone was not good, *ut supra*, but a false and fictitious stone, asserted it to be good and of the nature and quality of a Bezer Stone, and the plaintiff thereupon being ignorant of the goodness thereof, the defendant sold the said stone . . . to the plaintiff, . . . to the damage of the plaintiff £200. To which the defendant demurred.

"*Heale* prayed judgment for the plaintiff, and said that in all bargains the law requires plainness, and will punish deceit in the vendor if he affirms more than is true of his wares even although he does not warrant them, as appears by the case of 9 H. V. 53, one shall have action on the case against one who sells corrupt wine even if there be no warranty in the bargain, if he knows that it is corrupt; and so is the case of 22 H. VII. 91.

"*Crooke*, to the effect that action on deceit lies even if there be no warranty, if the defendant knew the wares to be corrupt; that in 42 Ass. 8, pl. 8, an action on the case was brought against one for that he had stolen cattle and sold to the plaintiff as his own, and adjudged that it lies; and I have a case where one had forged a lease, and knowing it to be forged sold it to another as a good and sufficient lease, action on the case lies although there be no warranty; and it seems to me that the words here, *asseruit* and *affirmavit*, amount to a warranty, the defendant knowing that the stone was false. But if the vendor had been ignorant of this, no action lies doubtless.

"*Gouldsmith, contra*. . . . When one is selling wares it is lawful for him to say the best he can to raise the price, and although the vendee buy it at his price, if he has no warranty, or at least reliance on the promises and prices. An action on the case does not lie although he is deceived, for *caveat emptor* and the book of 42 Ass. 8, pl. 8, is expressly 'the plaintiff relying on the truth of the defendant,' and the book of 9 H. VI. 53 was for wine, which was bad victual prohibited by the law to be sold, . . . but for other commodity than victual no action lies without allegation of warranty, or at least of reliance on the vendor's promise.

"And later, in Trinity, 4 James I., this case was argued again by *Heale* for the plaintiff in effect as above.

"FENNER. If one purchases protection of delay of a suit and does not

have it for the term of protection, action on the case lies for the deceit. TANFIELD. That is, for deceit to the court of the King, and it is not in vain that in all the books of precedents for this action there is always a warranty expressed, and that should be annexed to the bargain, otherwise no action lies except for victual; . . . and if one asks of me whether my horse ambles or trots, and I say he ambles and in verity he trots, and we bargain, shall this man have an action? It seems not, for it was his own credulity which deceived him.

"POPHAM. This case is a dangerous case and may be the cause of a multitude of actions, if it be thought that the bare affirmation of the vendor causes the action; but that is not so, but there must be a *sciens* in the vendor that the vendee will not get the effect of his bargain, and with intent to deceive. So if I have a horse which is secretly wounded so that he cannot live more than a day or two, and I knowing this sell to J. S., and the horse afterwards dies, J. S. shall have an action on the case against me, for that I sold him a thing of which I knew he could not have the benefit; but if J. S. sells the horse over and affirms him to be sound, the second vendee shall not have an action since his vendor did not know that the horse was thus mortally and privily wounded; and if one sells goods to which he has no title knowingly, and they are taken by the owner, the vendee shall have an action, but if the vendee sells them again not knowingly, no action lies; and so in the case at bar, the principal matter is that the defendant, knowing the stone to be counterfeit, sold it to the plaintiff for a Bezers Stone when in the knowledge of the vendor the vendee could not have the profit. . . . The cause of action is the *sciens* that the stone was not a Bezers stone, and the selling with intent to deceive. . . .

In Michaelmas Term, 4 James, this case was moved again by *Heale*. POPHAM said that it was of such importance that he thought it proper that it should be considered by all the judges of England, for if it should be decided for the plaintiff it would trench on all the contracts in England, which would be dangerous. [He went on to restate the case and his prior opinion] . . . in every case there is no need of affirmation that the goods are the proper goods of the vendor, for that is implied in the sale.

"TANFIELD. I will reserve my opinion in the principal case, but doubtless it is agreed by all that if in this case '*sciens le defendant*' were omitted the plaintiff would not recover. . . . *Et adjournatur.*"

RECENT CASES.

AGENCY — AGENT EXCEEDING HIS POWERS — SUBROGATION. — An agent with power to sell, but not to mortgage, mortgaged the lands of his principal, and without his knowledge or consent appropriated the proceeds to the discharge of a prior valid mortgage. *Held*, that the second mortgagee will not be subrogated to the mortgage discharged. *Campbell* v. *Foster Home Ass'n*, 30 Atl. Rep. 223 (Penn.).

On the ground of subrogation the case is clearly correct, since the doctrine is not applied in favor of a volunteer. Sheldon on Subrogation, sect. 240. It is suggested, however, that the principal, by accepting the payment of the first mortgage, has ratified the whole transaction, and plaintiff's mortgage is therefore valid. The principal cannot accept the benefit of the unauthorized acts of his agent, and refuse the burdens. See *Shoninger* v. *Peabody*, 57 Conn. 42; *Frank* v. *Jenkins*, 22 Ohio St. 597. As this point is not mentioned in the case, it is probable that it is not fully reported.